

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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4 In the matter of )  
5 Committee to Elect Charles Walker ) MUR 5418  
6 and Lourdes Gomez, as treasurer )  
7  
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9 **GENERAL COUNSEL'S BRIEF**

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12 **I. INTRODUCTION**

13 This matter was generated based on information ascertained by the Federal  
14 Election Commission ("Commission") in the normal course of carrying out its  
15 supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). On August 25, 2003, in  
16 MUR 5328, the Commission found reason to believe that the Committee to Elect  
17 Charles Walker and its treasurer violated 2 U.S.C. § 441a(f), based on the acceptance of  
18 an excessive contribution in the amount of \$5,000. On February 24, 2004, the  
19 Commission severed the portion of MUR 5328 concerning the Committee to Elect  
20 Charles Walker and Lourdes Gomez, as treasurer, into a new matter, designated  
21 MUR 5418.<sup>1</sup>

22 Based on the following factual and legal analysis, the General Counsel is prepared  
23 to recommend that the Commission find probable cause to believe that the Committee to  
24 Elect Charles Walker and Lourdes Gomez, as treasurer, violated 2 U.S.C. § 441a(f).  
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<sup>1</sup> Ms. Gomez became treasurer of the Committee to Elect Charles Walker on October 1, 2003, as reported in a Statement of Organization electronically filed on that date.

1    **II.    FACTUAL AND LEGAL ANALYSIS**<sup>2</sup>

2            Pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"),  
3    an authorized candidate committee may accept \$5,000 from a multicandidate PAC during  
4    each election. 2 U.S.C. §§ 441a(a)(2)(A), 441a(f). If a committee accepts contributions  
5    that exceed these limits, its treasurer shall either refund the excessive contributions or  
6    seek redesignation or reattribution within sixty days. *See* 11 C.F.R. § 103.3(b)(3).

7            The Act states that for purposes of the limitations set forth in 2 U.S.C.  
8    §§ 441a(a)(1) and 441a(a)(2), all contributions made by political committees "established  
9    or financed or maintained or controlled by any . . . person . . . or by any group of . . .  
10   persons, shall be considered to have been made by a single political committee."<sup>3</sup>  
11   2 U.S.C. § 441a(a)(5). Committees established, financed, maintained or controlled by the  
12   same person or group of persons are "affiliated committees." 11 C.F.R. § 100.5(g).  
13   Contributions made to or by such committees shall be considered to have been made to or  
14   by a single committee. *See* 11 C.F.R. §§ 100.5(g) and 110.3(a)(1).

15           The Committee to Elect Charles Walker ("Walker Committee") is a political  
16   committee within the meaning of 2 U.S.C. § 431(4), and is the authorized principal  
17   campaign committee of Charles Walker. PAC to the Future is an unauthorized  
18   multicandidate committee that has been registered with the Commission since March 24,  
19   1999 and qualified for multicandidate committee status on September 28, 1999. PAC to  
20   the Future's Statement of Organization listed Leo McCarthy as its treasurer. Team

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<sup>2</sup> All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

<sup>3</sup> Section 441a(a)(5) provides specific exceptions, none of which are relevant here.

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1 Majority is an unauthorized multicandidate committee that initially registered with the  
2 Commission under the name "Team Pelosi" on April 1, 2002. This committee amended  
3 its name to "Team Majority" on July 24, 2002, in response to a letter from the  
4 Commission reminding it that an unauthorized committee's name may not include the  
5 name of a candidate. *See* 2 U.S.C. § 432(e)(4). Team Majority's Statement of  
6 Organization also listed Leo McCarthy as its treasurer.

7 PAC to the Future made a \$5,000 general election contribution to the Walker  
8 Committee on October 15, 2002, and Team Majority made a \$5,000 general election  
9 contribution to the Walker Committee on the same date. The Walker Committee reported  
10 receiving both of these contributions on October 23, 2002.

11 PAC to the Future's and Team Majority's disclosure reports show that, in 2002,  
12 the two PACs received contributions from many of the same contributors and made  
13 contributions to many of the same committees. PAC to the Future and Team Majority  
14 share a common treasurer who reportedly acknowledged that the primary reason for  
15 forming Team Majority was to "give twice as much [*sic*] hard dollars."<sup>4</sup> On or around  
16 October 24, 2002, news articles appeared in publications questioning whether the two  
17 PACs were affiliated. *See supra* note 4.

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<sup>4</sup> *See* Ethan Wallison, *Pelosi PAC Stirs Questions*, ROLL CALL (Oct. 24, 2002) available at <http://www.rollcall.com/pages/news/00/2002/10/news1024b.html>. *See also* Mark Sherman, *Campaign Finance Experts Question Use of Pelosi's PACs*, ASSOCIATED PRESS (Oct. 24, 2002); *Pelosi to Stop Using PAC questioned by Campaign Finance Experts*, ASSOCIATED PRESS (Oct. 25, 2002); Tom Diemer and Martin Stolz, *U.S. House Candidate Ryan Returns Questionable Gift*, THE PLAIN DEALER (Oct. 29, 2002).

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1 Starting October 25, 2002, Team Majority, through Brian L. Wolff,<sup>5</sup> began to  
2 contact committees to which it made contributions that, when aggregated with those  
3 received by PAC to the Future, exceeded the Act's limits for a single committee. Within  
4 one week, Team Majority stopped making contributions to candidates and, within three  
5 weeks, Team Majority received refunds from over twenty (20) committees to which it  
6 made contributions that, when aggregated with those received by PAC to the Future,  
7 exceeded the Act's limits for a single committee. In addition, Team Majority  
8 contemporaneously refunded contributions to individuals who contributed in excess of  
9 \$5,000 to the two PACs, and stopped accepting contributions from individuals who had  
10 already contributed to PAC to the Future. PAC to the Future and Team Majority later  
11 acknowledged their affiliated status in a conciliation agreement and in amended filings  
12 with the Commission.<sup>6</sup>

13 Accordingly, all contributions made by Team Majority and PAC to the Future  
14 should be considered to have been made by a single committee. Because the two PACs  
15 were limited to making a \$5,000 contribution to any candidate committee, the  
16 contributions made by PAC to the Future and Team Majority, when aggregated, resulted

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<sup>5</sup> Mr. Wolff reportedly served as "the chief fundraiser for House Minority Leader Nancy Pelosi." See Chris Cillizza, *DCCC, DSCC Finish Filling Top Staff Positions*, ROLL CALL (Feb. 26, 2003). In 2002 and 2003, Team Majority disclosed various disbursements to Mr. Wolff, e.g., for "Fundraising services," "Travel expenses" and "Administrative services."

<sup>6</sup> The Commission entered into a conciliation agreement with PAC to the Future and Leo McCarthy, as treasurer, and Team Majority and Leo McCarthy, as treasurer, to resolve violations of the FECA stemming from excessive contributions received from two individual contributors totaling \$10,000, excessive contributions made to five authorized committees (including the Walker Committee) totaling \$25,000, and the failure to disclose the affiliated status of PAC to the Future and Team Majority. The agreement was accepted by the Commission on October 8, 2003. Pursuant to the terms of the agreement, on October 31, 2003, PAC to the Future and Team Majority filed amended Statements of Organization disclosing their affiliated status.

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1 in an excessive contribution to the Walker Committee in the amount of \$5,000. *See*  
2 2 U.S.C. §§ 441a(a)(2)(A) and 441a(f).

3 In a letter to the Commission dated November 7, 2003, the two PACs indicated  
4 through counsel that they had notified the candidate committees receiving excessive  
5 contributions – which included the Walker Committee – that the PACs waived their right  
6 to a refund of the excessive contributions. The Walker Committee's FEC reports,  
7 covering activity through September 30, 2004, do not disclose any refund or  
8 disgorgement of the \$5,000 excessive contribution. *See* 11 C.F.R. § 103.3(b)(3).

9 The evidence gathered during the Commission's investigation of this matter  
10 shows that, soon after the excessive contribution was made, the Walker Committee  
11 received at least two refund requests from Brian L. Wolff on behalf of Team Majority.  
12 First, a call log spreadsheet prepared by Mr. Wolff indicates that he contacted  
13 representatives of numerous recipient committees by phone on October 25, 2002,  
14 including "Lorraine" with the Walker Committee. Lorraine Miller informed  
15 Commission staff that she coordinated get-out-the-vote activities for the Walker

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1 Committee from late September through the first week of November 2002.<sup>8</sup> Ms. Miller  
2 recounted a meeting in the candidate's office prior to the general election that she said  
3 may have been prompted by a phone call from Mr. Wolff. She estimated that there were  
4 four or five campaign staff members at the meeting, and that the specific topic was  
5 whether to refund Team Majority's contribution. She recalled that they concluded that  
6 the campaign did not have sufficient funds to issue a refund. However, according to  
7 disclosure reports filed with the Commission, the Walker Committee received over  
8 \$78,000 in contributions between October 25, 2002 – the date of Mr. Wolff's phone call  
9 – and the November 5<sup>th</sup> election, and received an additional \$13,000 in contributions  
10 during the week following the election.

11 Second, Mr. Wolff appears to have memorialized his conversation with  
12 Ms. Miller in a November 21, 2002 letter received by the Walker Committee at its  
13 headquarters in Augusta, Georgia. The letter was sent by Mr. Wolff from Team  
14 Majority's San Francisco office. The text of the letter is as follows:

15 Dear Lorraine,

16 I am writing in reference to the Team Majority contribution that was made  
17 to the [Walker Committee] on 10/15/2002. *I called October 25, 2002*  
18 *regarding the return of the contribution [emphasis added].*  
19

20 Team Majority has voluntarily decided to suspend all its operations.  
21 Subsequently, the Federal Election Commission has received a complaint  
22 regarding the PAC. In light of this development, it is most important that  
23 the contribution be returned to the address below as soon as possible. We  
24 believe this will correct any perceived misunderstanding with regard to the  
25 FEC and your campaign.  
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<sup>8</sup> Lorraine Miller is currently listed in the Congressional Staff Directory as the Director of Intergovernmental Relations in the Office of the Minority Leader (Nancy Pelosi). The Walker Committee reported a \$4,381.94 disbursement to "Lorraine Miller" on November 5, 2002, itemized as "Expense Reimbursement – Travel."

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1 If you should have any questions please do not hesitate to call me at 415-  
2 296-5111.

3  
4 Sincerely,  
5 Brian L. Wolff  
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7 A copy of a Federal Express invoice indicates that the letter was delivered  
8 on November 22, 2002, and signed for by "L. Gomez," an apparent reference to  
9 the Walker Committee's current treasurer, Lourdes Gomez.<sup>9</sup>

10 Accordingly, the available evidence suggests that Mr. Wolff called the Walker  
11 Committee on October 25, 2002 to request a refund, that the excessive contribution was  
12 discussed by campaign staff prior to the November election, and that the letter confirming  
13 the phone call and reiterating the request was received by the Walker Committee on  
14 November 22, 2002. Each of these events occurred well before the 60-day deadline for  
15 returning the excessive contribution. *See* 11 C.F.R. § 103.3(b)(3). By failing to refund  
16 the money, the Walker Committee knowingly accepted an excessive contribution.

17 Based on the foregoing factual and legal analysis, the General Counsel is prepared  
18 to recommend that the Commission find probable cause to believe that the Committee to  
19 Elect Charles Walker and Lourdes Gomez, as treasurer, violated 2 U.S.C. § 441a(f).

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<sup>9</sup> Although Ms. Gomez did not serve as treasurer in 2002, the Walker Committee disclosed a \$2,000 payment made to Ms. Gomez on November 6, 2002 for "Political Consulting."

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1 **III. RECOMMENDATION**

2 Find probable cause to believe that the Committee to Elect Charles Walker and  
3 Lourdes Gomez, as treasurer, violated 2 U.S.C. § 441a(f).  
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8 10/21/04  
9 Date

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